APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,569	11/16/2001	Warren Cope	1591	7850

28004	7590	10/05/2006

SPRINT
6391 SPRINT PARKWAY
KSOPHT0101-Z2100
OVERLAND PARK, KS 66251-2100

EXAMINER
O'STEEN, DAVID R

ART UNIT	PAPER NUMBER
2623	

DATE MAILED: 10/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/998,569	COPE, WARREN
	Examiner	Art Unit	
	David R. O'Steen	2623	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>13 September 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

     a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

     b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

         Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

     (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

     (b) ☐ They raise the issue of new matter (see NOTE below);

     (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

     (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

         NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

     The status of the claim(s) is (or will be) as follows:

     Claim(s) allowed: _____.

     Claim(s) objected to: _____.

     Claim(s) rejected: _____.

     Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: On page 12 of the Remarks section, the applicant, on line 14-18 that Gross only teaches buffering media on the order of seconds since the page 65 of Gross asks the user to select the length of the buffer in seconds. Moreover, on lines 19-23 of page 12 of the Remarks, the applicant also states that Gross does not teach buffering a clip hours long because it only buffers "up to available memory." In response the applicant maintains that Gross can hold media in a buffer of significant length, even into the range of hours. On page 65, Gross clearly show that the default setting for buffering is "Entire Clip." It is well known that media can range in length from a few seconds to a few hours and Gross clearly accomodates this. As for the applicant's point that Gross buffers a clip "up to available memory," this is true of all systems, not just Gross'. No system is able to buffer a clip if it does not have enough memory available to store it. The examiner does not view this as teaching away from Gross buffereing a media segment of significant length (even hours in length). On page 13, lines 1-6, the applicant maintains that Gross only uses buffering to smooth out the arrival of packets for better performance. The examiner maintains that Gross goes further than this. Buffering allows the RealPlayer user watch a high quality stream (such as a 56.6k stream) over a lower quality connection (such as a 28.8K connection). The only downside is having to wait a great deal of time (Gross, page 48, lines 11-14). Also, on page 13 of the remarks, the applicant states that neither Shuster nor Gross suggest the use of the claimed metrics to control buffering. Also, the applicant asserts that the Shuster and Gross teach away from the applicant's claimed technique because they both use very small buffers, user selection, and packet loss. As discussed before, Gross' buffer size could range up to a few hours, if the physical limitations of the system do not bar it. While Gross does allow the user to set buffers, RealPlayer also include techniques like PerfectPlay (page 38) and SureStream (page 51) also automatically buffers the incoming media to improve quality. While Shuster does address packet loss, its techniques, in view of Gross, could be used to other ends. This is important since Gross actually suggests using the metrics to control buffering; namely, on page 52, where Gross states, " of course, RealPlayer buffers for you automatically to help you play higher bitrate streams. So even over slower connections you can experience superior quality media. The price you pay to watch higher bitrates over slower connections is the time it takes to buffer, which is still much shorter than it would be to wait for the whole file to download." In conclusion, the examiner maintains his rejection of Claim 1 and like independent Claims 16 and 31 and dependent Claims 2-5, 7-15, 17-20, 22-30, 32-35, and 37-45.

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